

PART 16

TYPES OF CONTRACTS

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TYPES OF CONTRACTS

SUBPART 16.2 - FIXED PRICE CONTRACTS

- 16.203 Fixed-price contracts with economic price adjustment.

16.203 Definitions.

(90) As used in this section---

"Established catalog price" means prices (including discounted prices) recorded in a catalog, price list, schedule, or other record that (a) are regularly maintained by the manufacturer or vendor; and (b) are published or otherwise available for customer inspection.

"Established market price" means a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

16.203-1 Description

(a)(90) Adjustment based on established prices. Established prices may reflect industry -wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items. (FARS DEV 96 -10).

(c)(90) Adjustments based on cost indexes of labor or material. These price adjustments may also be based on increases or decreases in indexes for commodity groups, specific supplies or services, or contract end items. (FARS DEV 96 -10).

16.203-2 Application.

(90) Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade

association, Government body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index. (FARS DEV 96 -10)

(91) Although a specific item or element of cost may require EPA coverage, the contracting officer should determine whether an EPA should cover the entire end item to take advantage of competitive market forces to moderate price fluctuations. The decision should be based on risk and price analyses of the alternatives, and may be an appropriate element of tradeoff in negotiations.

16.203-3 Limitations.

(90) An economic price adjustment (EPA) clause may be used in the event the contracting officer substantiates in documentation included as part of the acquisition plan that the conditions cited in FAR 16.203-3 exist and an EPA provision is required to achieve one of the two objectives stated therein, and/or its use is authorized in this section (FARS DEV 96 -10).

(91) When the contracting officer determines that none of the clauses prescribed in FAR 16.203-4 or DFARS 216.203-4-70 is applicable, a special EPA clause may be developed in accordance with FAR 16.203-4, DFARS 216.203-4-70, and/or this section (FARS DEV 96-10). However, such new clauses and revisions thereto shall be submitted to HQ DLA, ATTN: MMPPP, with identification of any options and other EPA to be included, for pre-solicitation review and approval. This approval requirement does not apply to a minor, incidental revision to correct or update a HQ DLA-approved, locally-developed EPA clause when a copy of the revised clause is furnished to MMPPP at the time of the decision to include it in the solicitation.

(92) The CCO or designee (not lower than one level above the contracting officer) shall approve any ceiling exceeding 10 percent. Such approval may cover more than one contract and extend over a stated definite period of time not to exceed 2 years.

(93) If not included in the EPA clause, the solicitation and contract shall elsewhere contain, and the contracting officer shall assure compliance with, the contractor's warranty that the contract prices do not include allowance for any contingency to cover increased costs also considered by the EPA clause. (When a contract option is also planned see 17.203(d).)

(94) If it becomes apparent that an EPA clause is clearly justified in a solicitation that did not include one, a FAR, DFARS, or HQ DLA-approved EPA clause may be included in any resulting contracts if all EPA contingencies covered by the EPA clause are removed from the price offered.

16.203-4 Contract clauses.

(90) Adjustments based on established prices. The contracting officer shall determine the most appropriate international, national, regional, or local area market that meets the criteria in FAR 15.804-3. The EPA clause included in the solicitation shall identify the index or established market price, the document containing such index or price, and its effective date or period. An established catalog price-type EPA clause (FAR 52.216-2 or -3, DFARS 252.216-7000 or -7001, or similar locally-developed clause) may be included in solicitations and resulting contracts for an item previously bought without such EPA clause only after the contracting officer determines that neither an index-type or an established market priced EPA is suitable (i.e., the requirements of FAR 16.203-4(d) and DFARS 216.203-4(d) are not met or there is no suitable index or established market price describing the supplies with specificity) and documents in the acquisition plan the results of actions taken in reaching this determination. If the contracting officer is unable to identify an established market price or index that satisfactorily reflects economic fluctuations, then the EPA provision included in the solicitation may provide for offeror fill-in to recommend the most appropriate established market price or index (if none, the most appropriate established catalog price), along with the document containing the established price or index and the effective date/period of the established price or index (and, for established catalog price EPA clauses, the identification and amount of any applicable extras, discounts, or rebates used in calculating the contract price). The contracting officer shall select the most appropriate established market price or index identified (if none, the most appropriate established catalog price), following verification to ensure that the market (or catalog) price or index is correct and that the established catalog or market price meets the criteria of FAR 15.804-3. The contracting officer may amend the request for proposal (RFP), after requesting and receiving best and final offers, to include this selection. ***In addition, when using an established or published market price clause, include the provision at (d)(iv)(90), after substituting "market price" for the three occurrences of the word "index".***

(c) Adjustments based on actual cost of labor or material.

(90) An actual cost type EPA clause (FAR 52.216-4 or a locally-developed clause) may be included in solicitations and resulting contracts for an item previously bought without such an EPA clause only after the contracting officer determines that no other type of EPA clause is

appropriate and documents in the acquisition plan the results of actions taken in reaching this determination. A provision shall also be included in the solicitation and any resulting contracts that--

(1) Identifies the specific direct cost factor and dollar amount needed to establish the baseline from which adjustments will be made, regardless of whether cost or pricing data was submitted;

(2) Incorporates by reference, the cost principles and procedures in FAR Subpart 31.2 for use as the basis for pricing the baseline and any adjustment under the EPA clause;

(3) Identifies any appropriate markup factors/amounts; and

(4) Provides the methodology for price adjustment calculations.

(d) Adjustments based on cost indexes of labor or material. An index clause may be included in solicitations and resulting contracts only if the contracting officer documents in the acquisition plan, rationale indicating that the acquisition satisfies the requirements of FAR 16.203-4(d) and DFARS 216.203-4(d). The contracting officer shall select the most appropriate index published by the Bureau of Labor Statistics (BLS). Another index may be used provided the contracting officer determines that no BLS index is suitable and documents in the acquisition plan the specific BLS indexes considered, why they were unsuitable, and rationale demonstrating the suitability of the index selected.

(d)(iv)(90) The clause shall specify that: "If the contracting officer determines that the index consistently and substantially fails to reflect market conditions, the contracting officer may amend the contract to specify use of an appropriate substitute index, effective on the date the index specified in the contract begins to consistently and substantially fail to reflect market conditions."

(d)(v)(90) When planning to use an index-type clause which provides for price adjustment, whenever the actual index for a period differs from the projected index for that period sufficiently to trigger a price adjustment, the contracting officer shall ensure that the projected index for each period to be included in the clause at least equals the projected indexes used in pricing the same cost element under the contract.

SUBPART 16.3 - COST-REIMBURSEMENT CONTRACTS

16.306 Cost-plus-fixed-fee contracts.

(c) Limitations.

(2) The D&F required by FAR 16.306(c)(2) shall be signed by the contracting officer.

SUBPART 16.5 - INDEFINITE-DELIVERY CONTRACTS

16.501-2 General.

(c) The requirements of DFARS Subpart 217.74 and DLAD 17.74 shall be met for indefinite-delivery contracts providing for issuance of undefinitized delivery orders (UDOs).

(90) IDCs that enable decentralized ordering shall contain provisions for customers and other users the options of (i) placing orders to be paid using their Governmentwide purchase card and (ii) ordering against their purchase card, for individual orders not to exceed \$100,000. An exception is authorized only to the extent the prospective contractor refuses to accept the purchase card for ordering and payment. Customers and other users of the Governmentwide purchase card against IDCs issued by contracting offices of DLA and other agencies are bound by any applicable restrictions and policies issued by or in accordance with procedures applicable to the individual users (DLA users are governed by DLAD 4105.3 & DLAI 4105.3, DLA Governmentwide Commercial Purchase Card Program).

(d) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangements under Part 16, including firm fixed price, fixed price with economic price adjustment, fixed price with prospective redetermination, or price based on catalog or market prices. When prices are based on catalog or market prices, the price to be paid may be determined by establishing an adjustment factor and applying it to the price in industry wide pricing guides or manufacturers' price catalogs. Normally, the adjustment factor will be a fixed percentage discount to be applied to the price in effect on the date of each order.

16.503 Requirements Contracts.

(d) The determination that award of multiple contracts is not practicable shall be contained in the acquisition plan or otherwise documented in writing prior to issuance of the solicitation.

16.504 Indefinite-quantity contracts.

(a) The Government's quantity limitations may be stated in different ways; for example, as a number of items or a dollar value worth of items. Stating the Government's minimum/maximum liability for the entire contract is appropriate for multiple line item contracts when, due to the unique nature of the requirement, it is difficult or impossible to predict, prior to solicitation, the number of individual items needed. The contracting officer must balance the risks inherent in providing more specific limitations with the increased risk to the contractor, and possible increased cost to the Government, of providing less specific limitations.

(4)(iv) Consideration of past performance in order placement decisions shall include success in implementation of proposed socioeconomic support programs (see 15.605(b)(1)(90)) and performance in carrying out Mentoring Business Agreements (see 19.72). Solicitations shall so state in the explanation of order placement criteria (FAR 16.504(a)(4)(iv)).

(c) The determination not to make multiple awards shall be contained in the acquisition plan or otherwise documented in writing in the contract file.

16.505 Ordering.

(a)(90) A delivery order must be issued for any quantity ordered, including a quantity ordered concurrent with award of a basic contract.

(a)(5) DLA Form 1224, Shipping Instruction, may be used to issue automated orders under indefinite-delivery contracts not exceeding the simplified acquisition threshold.

(b) Solicitations shall advise offerors that (1) the competition requirements of FAR Part 6 do not apply to placement of individual task and delivery orders; (2) individual orders shall be placed in accordance with the selection criteria specified in the solicitation/contract; and (3) complaints about the placement of individual orders shall be reviewed by the activity competition advocate.

(2) The determination not to provide all awardees a fair opportunity to be considered for a particular order in excess of \$2,500 should be documented in the order file.

(4) The competition advocate at each contracting activity/office (as defined in DLAD 2.101) shall act as the activity task and delivery order contract ombudsman pursuant to FAR 16.505(b)(4). The ombudsman shall attempt to resolve contractor complaints relative to placement of individual task and delivery orders at the local level. Complaints which cannot be so resolved shall be forwarded to the HQ through MMPOA for resolution by the DLA competition advocate. Each activity is responsible for developing procedures for executing the duties and responsibilities of its local ombudsman.

SUBPART 16.6 - TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

16.601 Time and materials contracts.

(c) Limitations.

(90) "Not to exceed" price ceilings shall be included in each option and delivery order.

16.603 Letter contracts.

16.603-3 Limitations.

The determination required by FAR 16.603-3 shall be included with the DFARS 217.7404-1 authorization request.

16.603-90 Procedures.

(a)(2) Requests for HQ DLA preaward review and approval of a letter contract or other undefinitized contract action (UCA) shall be made by the chief of the contracting office. Requests subject to 1.690-6(g) may be transmitted electronically to MMPPB.

(b) At a minimum, requests for approval shall include:

(1) A written Statement of Urgency supporting the requirement for a UCA, including:

(i) The quantities, dates and priorities of existing and projected requirements to be filled by the buy;

(ii) The date that the requirement was first known to exist;

(iii) Why the interests of national defense demand that a contractor be given a binding commitment so that work can begin immediately;

(iv) Why negotiation of a definitive contract or priced order did not and cannot occur in sufficient time to meet the acquisition need; and

(v) The determination required by FAR 16.603 -3 (letter contracts only) and authorization to take the necessary actions for entering into an UCA required by DFARS 217.7404-1;

(2) The contracting officer's responsibility determination of the prospective contractor (FAR 9.103);

(3) The ceiling total price and ceiling unit price(s) to be included in **DFARS Clause 252.217-7027 Contract Definitization**, an explanation of how they were derived, and documentation of the reasonableness of each ceiling unit price (see 16.703(d)(90) or 17.7603 -3(a), as applicable), to include identification of the lowest unit price for each item within the most recent 12-month period.

(4) The obligated amount, interim billing price, and the predefinitization limits of the Government's liability under the UCA;

(5) A discussion of any requirement for progress payments, provisional payments, and options for increased quantity or performance period;

(6) The proposed definitization schedule including dates for --

(i) Receipt of the contractor's proposal;

(ii) Beginning of negotiations;

(iii) Completion of negotiations;

(iv) Target date for definitization; and

(7) The following additional milestone dates (unless another contract management activity will definitize):

(i) Receipt of field pricing report;

(ii) Receipt of the local price or cost/price analysis; and

(iii) Submission of the proposed definitive contract and supporting file for HQ DLA review and approval, pursuant to 1.690-6(c)(6).

(8) The delivery schedule.

(c) A copy of the signed letter contract shall be forwarded to HQ DLA, ATTN: MMPPB, within 1 week of execution.

SUBPART 16.7 - AGREEMENTS

16.703 Basic ordering agreements.

(c) Limitations.

(90) If a DLA BOA is to permit progress payments, such payments should normally be precluded on orders with a ceiling price below \$1 million and/or having deliveries scheduled to commence in less than 6 months (less than \$100,000 and/or less than 4 months for small business firms). This exclusion may be waived where the contracting officer documents the review and results specified in FAR 32.502-1(d)(1) and approval is granted at a level above the contracting officer.

(1)(ii)(90) The requirements of DFARS 217.7404-1 through 217.7404-4, DFARS 217.7405 through DFARS 217.7406, and DLAD 17.7404-2 through 17.7404-90 shall be included in the terms and conditions of BOAs executed by DLA contracting offices which authorize issuance of undefinitized delivery orders (UDOs), for applicability to such UDOs.

(d) Orders.

(90) The file shall be documented when the price or cost analysis techniques discussed at 15.805-2(d) and 15.805-3(90) are used for award of priced delivery orders and definitization of UDOs.

(2)(ii)(90) If a DLA BOA contains a progress payment clause without an exclusion provision for orders with a ceiling price below \$1 million (\$100,000 for small business firms) and/or having deliveries scheduled to commence in less than 6 months (4 months for small business firms), a provision precluding such applicability shall be included in all delivery orders below these thresholds except where the contracting officer documents that the requirements of 16.703(c)(90) and/or FAR 32.502-1 have been met.

(3)(90) The requirements of DFARS Subpart 217.74 and DLAD 17.74 shall be met on all UDOS issued by DLA contracting offices.

(3)(91) The requirements of 16.603-90(a)(2) through (90)(c) shall be followed when HQ DLA preaward review and approval to award a UDO is required by 1.690 -6(g).